



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO. 137 OF 2025

1. **Shri Irshad Khan s/o Akil Ahmad Khan,**
Aged about 43 years,
Occupation : Service
R/o Villa No.B-87,
Vistara Township,
Village Arandiya, AB Bypass Road,
Indore

APPLICANTS

// V E R S U S //

1. **Afsha Irshad Khan,**
Aged 36 years,
Occ. Service,
R/ Nahar Road,
M.S.E.B. Colony,
Rajiv Gandhi Chowk, Bhandara,
Tahsil and District Bhandara
2. Arsh s/o Irshad Khan,
Aged 9 years,
Through his natural guardian
mother Afsha Irshad Khan,
R/o Nahat Road, M.S.E.B. Colony
Rajeev Gandhi Chowk, Bhandara
Tahsil and District Bhandara

NON-APPLICANT

Mr. Piyush Mishra, Advocate with Ms Ishita Khare, Advocate for the applicant.

Mr. Omprakash Gupta, Advocate with Ms Aparna Satheesan, Advocate for the non-applicants.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 26/03/2026

ORAL J U D G M E N T :

1. This revision challenges the judgment and order dated 06/10/2023 passed by Family Court, Bhandara granting maintenance in petition E No.16/2022 to the non-applicant No.1 @ of Rs.20,000/- and non-applicant No.2 @ of Rs.6,000/-

2. The brief facts which are necessary for the disposal of the application are as under:-

The applicant got married to non-applicant No.1 on 25.05.2011 as per muslim rituals at Bhandara. As per allegations after solemnization of marriage non-applicant No.1 resumed the cohabitation at the house of present applicant. It is alleged by her in the application which is filed for grant of maintenance in the Family Court Bhandara that since the date of marriage she was subjected for the ill treatment and she was repeatedly humiliated. She was also shown to be unlucky for the family and she was further ill treated for the unlawful demand and therefore, she constrained to leave the matrimonial house. Therefore, she approached to the Family Court by filing application under Section 125 of Cr.P.C. for grant of maintenance. The notice was issued to

the present applicant. But he has not appeared and therefore, proceedings proceeded ex parte and maintenance was granted as aforesaid.

3. Being aggrieved and dissatisfied with the same the present revision application is filed on the ground that in fact notice itself is not served on the present applicant. Therefore, he was not having knowledge. It is contended that notice was issued to him on the address Plot No.152, Noori Colony, Noori Musjid Nara Road, Nagpur whereas he was admittedly serving at Dewas since 2018 in Suzlon Global Services Limited and this fact was within the knowledge of the present non-applicants. Then also the notice was issued to the address of the Nagpur therefore, there is no proper service and no sufficient opportunity was granted to the present applicant to contest the application. In view of that, judgment and order of grant of maintenance deserves to be quashed and set aside.

4. Per contra this application is strongly opposed by the non-applicants on the ground that in criminal revision No.71/2021 the applicant has shown his address of Nagpur and

therefore on the same address the notice was issued. Therefore, no illegality is committed. Despite the service of notice applicant has not appeared in the proceeding. Therefore, learned Family Court has proceeded with the application and disposed the same. Therefore, no case is made out for remanding of the matter or for quashing and setting aside the matter.

5. Learned counsel for the applicant placed reliance on the decision of *Lalit Singh vs. State of U.P and others* reported in *2023 SCC OnLine All 2775* wherein in paragraph No.11 it is held that in the light of aforesaid facts and circumstances and also in view of fact that in impugned judgment the mode of service of notice/summon to revisionist in proceeding under Section 125 Cr.PC. is not mentioned, therefore, the claim of the revisionist that he was not aware of the maintenance proceeding initiated by opposite party No.2 as the dispute between the parties was settled through compromise dated 04.03.2016 and no notice of said maintenance case was served upon him, cannot be brushed aside and the matter was remanded back.

6. In the light of the facts and circumstances if the facts of the present case are taken into consideration there is no dispute that the present applicant was serving in Suzlon Global Services Limited in the application filed by the non-applicants for grant of maintenance wherein also she has specifically written that the applicant is serving in Suzlon Copper Limited and she has sought an information from the said company as to the income of the applicant. In paragraph No.8 of the judgment itself specifically states that the non-applicant has obtained the information from Suzlon Energy Company Limited and it was informed to her that present applicant is serving in Suzlon Infrastructure Services Limited and at present posted at Kachha. It is further mentioned that he was posted at Kachha from 19.12.2008 to 26.11.2010. This observation of the Family Court specifically shows that admittedly the present applicant was not residing at Nagpur and as per the information received by the non-applicant he was serving in Kachha. The documents which are filed on record by the non-applicants shows that at the relevant time when the application was filed i.e. in the year 2022 i.e. 03.06.2022 the present applicant was serving at Dewas. The rent agreement also shows that he entered into the rent agreement to obtain the

residence for himself. The communication issued by the company also shows that he is posted at Dewas since 2018 and his permanent residence is Indore. Thus, these documents sufficiently show that admittedly, the present applicant was not residing at Nagpur and the non-applicants was aware about the said fact that he is serving in Suzlon Global Services Limited. Learned counsel for the applicant rightly placed reliance on the decision of Allahabad High Court wherein this aspect is considered by the Court and it is held that there was no knowledge to the applicant therein regarding the proceeding under Section 125 of Cr.P.C. Here also there is nothing on record to show that there was knowledge to the present applicant of the said proceeding. Admittedly, while considering the application under Section 125 of Cr.P.C. summary procedure requires to be followed. Section 126 of the Criminal Procedure Code deals with the procedure which is to be adopted while dealing with the application under Section 125 of Cr.P.C. The proceedings under section 125 may be taken against any person in any district where he is, or where he or his wife resides, or where he last resided with his wife, or as the case may be, with the mother of the illegitimate child. Sub-section 2 of Section 126 states that all evidence to such proceedings shall be taken in the

presence of the person against whom an order for payment of maintenance is proposed to be made or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons cases. The provision to sub-section 2 states that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

7. As the pleadings of the non-applicants in the application itself show that the applicant is serving in Suzlon Global Services Private Limited. Therefore, service requires to be done on him on the address wherein he is serving. The Family Court is also aware from the same but the Family Court has not taken care of that aspect and also not considered that notice service is on the residential address, there should be on permanent

address of the present applicant where he was not residing. The nature of the service is also not mentioned by the Family Court while deciding the application. It is only mentioned that the notice was served but whether that notice was served or not and whether it is properly served or not ? it is also not considered by the Family Court. Thus, the present applicant was deprived from the getting an opportunity to contest the application of the non-applicants and the matter was decided *ex parte*. Therefore, opportunity is to be granted to the present applicant to contest the application and therefore, the application deserves to be remanded back to the Family Court, Bhandara by setting aside the order of maintenance.

8. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Revision is allowed.

(ii) The order passed by Family Court, Bhandara dated 06.10.2023 in Petition No.E-16/2022 for granting maintenance @ Rs. 20,000/- to the non-applicant No.1 and Rs.6,000/- to the non-applicant No.2 is hereby quashed and set aside.

(iii) The Petition No.16/2022 is remanded back to the Family Court, Bhandara.

(iv) The parties to appear before the Family Court Bhandara on 10.04.2026.

(v) The Family Court, Bhandara shall give an opportunity to the present applicant to appear and adduce the evidence and contest the claim.

(vi) The Family Court, Bhandara shall also consider the application of both the parties if they want to adduce any additional evidence in support of their contention.

9. The criminal revision application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)